IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Crl.Rev.Pet.No. 364 of 1998()

CRA.78/1995 of ADDL.SESSIONS COURT, KOZHIKODE
ST.1385/1992 of JUDL. 2ND CLASS MAGISTRATE , KOZHIKODE
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REVN. PETITIONER: APPELLANT

ALIKOYA, S/O. ABOOBACKER,
VADIYIL HOUSE, MANKAVE, CALICUT 7.

BY ADV. SRI.CYRIAC THOMAS

RESPONDENTS: RESPONDENTS
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1. THE COMMISSIONER (SECRETARY)
CORPORATION OF CALICUT, KOZHIKODE.

2. STATE OF KERALA, REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI
SRI.P.V.KUNHIKRISHNAN,SC,KOZHIKODE CORP

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON 16/10/2007 THE SAME DAY PASSED THE FOLLOWING:

CRRP. NO.364/1998

ORDER ON CRL.MP. NO.1917/1998 IN CRRP. NO.364/1998

DISMISSED

16.10.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

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CRL.R.P.NO.364 OF 1998

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DATED THIS THE 16th October 2007

ORDER

The revision petitioner is the accused in S.T.No.1385/1992 in the Court of Additional Hon. Special Judicial 2nd Class Magistrate, Kozhikode and convicted under Section 413 of the Kerala Municipal Corporation Act (hereinafter referred to as 'the Act', and Rule 30(2) of Schedule II of the Act for non-payment of licence fee and sentenced as modified by the appellate court to pay Rs.16,924/- and to pay a fine of Rs.100/- and in default to undergo simple imprisonment for 10 days. The prosecution case is that the revision petitioner who was the licencee of shop room No.12 at Idiyangnara market of Calicut Corporation for the period from 1-7-1986 to 20-2-1989 defaulted to pay licence fee for the period from 1-7-1986 to 20-2-1989 amounting to Rs.11546/- and interest on the above amount amounting to R.4690/- and a sum of Rs.5780/- towards loss sustained by the Corporation for the period from 20-2-1989 to 28-7-1990, i.e. till the handing over of the building to another person as provided under the agreement, interest thereon amounting to Rs.1531/- and

electricity charges of Rs.775/- and warrant fee of Rs.10.50. The appellate court modified the amount due as Rs.16,924/- after reducing the amounts paid at the time of entrustment, i.e. Rs.5000/- as lease money and Rs.2400/- as advance licence fee; altogether Rs.7400/-.

2. The evidence adduced in the matter consisted of the testimony of PW1 and Exts.P1 to P8(a). It is the contention of the revision petitioner/accused that the proceedings initiated are hopelessly barred by limitation. It is the contention that he was not in occupation of the building from 1-7-1986 onwards and that the same was intimated to the Corporation and it was only on account of the fault of the Corporation that the building was not taken possession by the Corporation. Hence, according to him, he is not liable to pay the amounts due from 1-7-1986 onwards . Of course, he has not adduced any evidence in this regard. The complainant/Corporation had adduced formal evidence through PW1, the L.D. clerk of the particular section who had joined duty after the relevant dates involved in the proceedings.

3. It is admitted that the date of entrustment is 1-3-1985 which is evident from the copy of the agreement produced as well, i.e.

Ext.P1. At the time of hearing it was stated by the counsel for the revision petitioner that in fact the revision petitioner has not paid any licence fee which is at the rate of Rs.400/- since the date of occupation. I find that the case of the revision petitioner/accused in the statement filed before the trial court is that he has paid rent upto 1-7-1986. The point stressed is that even after taking possession of the room by the Corporation by breaking open the lock on 20-2-1989 the complaint has not been filed even within a period of three years from the above date. The complaint has been filed only on 19-9-1992 which is beyond three years from the date of taking possession. According to the counsel for the revision petitioner, the time limit has expired before the above date as the amounts are due from 1-7-1986 onwards. It is submitted that the revision petitioner/accused was laid up and he could not in fact even occupy the premises from the beginning itself.

4. Section 417 is the relevant provision which provides that no distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the corporation under the Act after the expiration of a period of three years from the date on which distraint might first have, been made, a suit might

first have been instituted or prosecution might first have been commenced, as the case may be, in respect of such sum. The appellate court has relied on Clause-9 of Ext.P1 agreement as per which the respondent/Corporation is entitled to realise the arrears of licence fee on the appellant being evicted from the premises. Further as per Clause 20 of Ext.P1 agreement the amount due under the agreement is recoverable as if it were arrears of property tax. It was relying on the terms in Ext.P1 agreement, the courts below have found that the proceedings initiated is not beyond the period of limitation. I find that as contended by counsel for the revision petitioner, the terms of the agreement cannot have overriding effect over the statutory provisions. It is pertinent to note that as pr Rule 37 Schedule II of the Act if the tax due etc. the Commissioner may if the tax has remained unpaid for more than twelve months require the occupier to pay the amount within a specified period not being less than fifteen days and if the occupier fails to comply with the requisition the Commissioner may distraint and sell any movable property found on the building etc.; and prosecution cannot be initiated without exhausting the distraint. Hence as per Section 417 the first distraint could have been initiated after 12 months and a

period of 15 days as contemplated under Rule 37 Shecdule II. Hence for the period from 1-7-1986 and after 12 months of the same, notice ought to have been issued and on expiry of 15 days distraint could have been issued. If so calculated evidently a substantial portion of the amounts claimed by the Corporation is barred by limitation. I find that the prosecution initiated including the amounts for the periods which are barred by limitation. Hence, I find that the prosecution cannot be sustained. The findings of the courts below are set aside. The accused is acquitted. The Crl. revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P. NO. 364 of 1998

ORDER

16-10-2007